

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 15 December 1993

**Proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DECISION
establishing a procedure for the exchange of information
on national measures derogating from the principle
of the free movement of goods within the Community**

(presented by the Commission)

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EXPLANATORY MEMORANDUM

INTRODUCTION

1. In its resolution on making the single market work ⁽¹⁾, the Council undertook to work in partnership with all Community institutions and Member States to ensure that the single market worked effectively and to act speedily if new barriers were found which could jeopardize its operation; it also invited the Commission to propose any practical arrangements to help ensure the smooth running of the single market.
2. This proposal, which follows on from the Commission communication to the Council and Parliament on management of the mutual recognition of national rules after 1992, is precisely aimed at establishing a simple procedure for the exchange of information between Member States and the Commission that will enable the Community to manage transparently and pragmatically the mutual recognition of national laws which have not been harmonized at Community level.

PRESENT SITUATION

3. Now that we have a single market in which priority is to be given to mutual recognition in cases where national rules have not been harmonized, steps must be taken to ensure that, where a Member State, in order to satisfy a mandatory requirement or on one of the grounds specified in Article 36 of the EC Treaty, makes an exception to the principle of the acceptance of goods coming from other Member States, this is immediately brought to the attention of the Commission and the other Member States.

⁽¹⁾ Council Resolution of 7 December 1992 on making the single market work, OJ No C 334, 18.12.1992, p. 1 (see in particular points 7 and 24).

4. Only transparency can enable barriers to the free movement of goods to be dealt with swiftly:
- either, and preferably, on a voluntary basis between the Member States concerned;
 - or, if necessary, at Community level before such problems produce all their adverse effects on businesses, consumers and, more generally, Community citizens.
5. The cooperation thus established between the Member States themselves, where necessary with support from the Commission, should help ensure that action by the Community is limited to what is necessary for safeguarding the free movement of goods.
6. However, problems can be resolved in a non-contentious manner only within a clearly defined framework based on mutual confidence.

The Member State concerned must thus transmit the information at the earliest opportunity, explaining the reasons why it deems it legitimate to require compliance with its (existing) legislation in the case of goods coming from another Member State.

In particular, according to a consistent line of decisions by the Court, a Member State departing from the principle of acceptance of goods coming from other Member States must be able to prove that it is acting to satisfy a mandatory requirement or on one of the grounds specified in Article 36 and that those aims are not achieved in the Member State of dispatch.

PROPOSAL

7. The proposed information procedure covers four types of decision:
- a general ban on a model or type of product;
 - refusal to grant authorization in respect of a model or type of product which is being placed on the market of the Member State concerned for the first time and is subject to an authorization procedure along the lines of that resulting from the Court's case-law and described by the Commission in its communication on the free movement of foodstuffs within the Community (OJ No C 271, 24.10.89);
 - a requirement that the model or type of product concerned be modified before it can be placed on the market in question;
 - withdrawal from the market of a model, type or category of product.

8. The information procedure would concern only the final decision taken on a model, type or category of product (general ban, refusal to grant authorization, withdrawal from the market) and not the measures preparing or leading up to that decision (preventive measures, investigations, etc.).
9. Furthermore, this procedure for the exchange of information should cater for only those cases which are not already covered by existing notification procedures:
 - technical regulations which have already been notified at the draft stage under Directive 83/189/EEC should not be notified under these arrangements. Only decisions taken in pursuance of such technical regulations would be concerned;
 - likewise, where it is decided to impose a general ban on a category of products, to refuse to grant authorization in respect of a particular product or to withdraw a product from the market on the grounds of the hazard it represents for the health and safety of consumers, specific procedures are already provided for under Decision 89/45/EEC on a Community system for the rapid exchange of information on dangers arising from the use of consumer products and under Directive 92/59/EEC on general product safety (from 29 June 1994);
 - lastly, certain directives contain safeguard clauses that require Member States to give notification of national measures they are allowed to take in certain well-defined circumstances.
10. By contrast, Community provisions currently in force do not always make it possible to ascertain, as soon as they arise, cases where a Member State considers it legitimate and necessary to require compliance with its own national rules for a model or type of product which is nevertheless lawfully and fairly produced and/or marketed in another Member State.

Businesses must be able to operate in a legal environment based on clear principles to which only rare exceptions are allowed.

The proposed information procedure should thus enable possible exceptions to be identified swiftly and should help to find a solution that re-establishes or strengthens the principle of the free movement of goods.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas the Commission has, in accordance with Article 100b of the Treaty, drawn up the inventory of national laws, regulations and administrative provisions which fall under Article 100a and which have not been harmonized pursuant to that Article;

Whereas that inventory has revealed that most of the barriers to trade in goods reported by Member States are being dealt with either by measures taken under Article 100a or through proceedings initiated under Article 169 of the Treaty for failure to fulfil obligations under Article 30;

Whereas the transparency of national measures banning products may make it easier to deal quickly and at the appropriate level with problems which may jeopardize the free movement of goods, *inter alia* by approximating such measures in good time or adjusting them pursuant to Article 30 of the Treaty;

Whereas, in order to facilitate such transparency, a simple and pragmatic procedure should be established for the exchange of information between Member States and with the Commission so that any problems that may arise in connection with the operation of the internal market can be settled satisfactorily for both businesses and consumers;

Whereas such a procedure should cover only those cases in which a Member State takes steps to prevent, on grounds of non-conformity with its own national rules, the free movement and/or placing on the market of goods liable to be entered for free circulation and/or marketed in another Member State;

Whereas, moreover, the procedure should not duplicate notification or information procedures provided for by Community measures;

Whereas this action falls within one of the Community's exclusive fields of competence, namely the removal of barriers to the free movement of goods; whereas it clearly complies with the principle of proportionality, which goes hand-in-hand with the principle of subsidiarity, since it is confined to ensuring the awareness of cases where the application of non-harmonized national rules is liable to affect the satisfactory operation of the internal market.

HAVE ADOPTED THIS DECISION:

Article 1

Where a Member State takes steps to prevent the free movement and/or placing on the market of a particular model or type of product that is lawfully produced and/or marketed in another Member State, it shall inform the Commission and the other Member States of its decision where the measure results in:

- a general ban on the goods, and/or
- refusal to allow the goods to be placed on the market, and/or
- modification of the model or type of product concerned before it can be placed on the market, and/or
- withdrawal of the goods from the market.

Article 2

"Modification of the model or type of product" as referred to in the third indent of Article 1 means any modification of one or more of the product's characteristics as listed in the definition of "technical specification" given in Article 1 of Directive 83/189/EEC.

Article 3

- 1.** The notification requirement laid down in Article 1 shall relate to decisions taken by any individual or public or private body so authorized, with the exception of judicial decisions.
- 2.** Article 1 shall not apply to:
 - decisions taken solely in pursuance of Community harmonization measures;
 - decisions or draft measures notified to the Commission under specific Community provisions;
 - measures preparing or leading up to the main decision referred to in Article 1, such as preventive measures or investigations.
- 3.** The initiation of proceedings for judicial review of such a main decision shall under no circumstances suspend the application of Article 1.

Article 4

The information referred to in Article 1 shall comprise:

- a copy of the decision taken by the competent national authority, as published and/or notified to the person concerned, and
- an information sheet containing the particulars specified in the Annex to this Decision.

This information shall be communicated within 30 days of the date the decision referred to in Article 1 is taken by the Member State concerned.

Article 5

Where the decision referred to in the first indent of the first paragraph of Article 4 comprises one or more annexes, only a list briefly indicating its/their contents shall be transmitted along with the copy of the decision proper.

The notifying Member State may be requested by the Commission and/or any other Member State to provide, within one month of any such request, the full text of the annexes mentioned in the list or any other useful information on the decision.

Article 6

The Member States and the Commission shall take the steps necessary to ensure that their officials and agents are required not to disclose information obtained for the purposes of this Decision which, by its nature, is covered by professional secrecy, except for information relating to the safety properties of a given product which must be made public if circumstances so require, in order to protect the health and safety of persons.

Article 7

Each Member State shall inform the Commission of the competent national authority or authorities which it has appointed to transmit or receive the information referred to in Article 1. The Commission shall pass on these particulars to the other Member States forthwith.

Article 8

Within two years of the date of notification of this Decision, the Commission shall report to the Council and the European Parliament on its implementation and shall propose any amendment it deems appropriate. For the preparation of that report, Member States shall communicate to the Commission any useful information on the way in which they apply this Decision.

Article 9

Within two months of the date of notification of this Decision, each Member State shall communicate to the Commission the measures taken for the purpose of implementing it.

Article 10

This Decision is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX

**PROCEDURE FOR THE EXCHANGE OF INFORMATION
on national measures
derogating from the principle of the free movement of goods
within the Community**

Decision 93/.../EC

1. **Notifying Member State**

- name and address of the person to be contacted for further

2. **Date of notification**

3. **Model or type of product**

- name and make of the product and references to the type or model;
- brief description of the product.

4. **Measures taken**

5. **Main grounds**

- grounds of general interest justifying the measures taken;
- specify the references to the national rules with which the product in question is deemed not to conform;
- indicate in what respects the national rules and/or conditions according to which the product in question is produced and/or marketed do not ensure equivalent protection of the general interest concerned.

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